

# **Title IX Sex Discrimination: Updates and Changes in January 2025**



**THE TRUST**

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**Presented by**

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# Disclaimer

The information provided in this document is for informative purposes only and should not be used in place of legal advice.

# What is Title IX?

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

United States Congress, 1972

# Title IX 2024 Regulations

- Protected persons to include sex stereotypes, sexual orientation, gender identity, pregnancy and related conditions, etc.
- Increased obligations for training and proactive preventive measures
- Expanded who can be a complainant

# 2024 Regulations Challenges

- Certain states joined to file lawsuits challenging the constitutionality of the 2024 regulations and arguing that it exceeded the permitted authority under the Administrative Procedures Act (APA)
- One court recently issued a vacatur, but the other lawsuits are still ongoing

# USDC Kentucky Vacatur

- On January 9, 2025, a District Court Judge in Kentucky issued a vacatur in the pending lawsuit
- Vacatur means it “takes the unlawful agency action off the books” (i.e. to “vacate” the regulations)
- So.... all of the 2024 changes you learned are no longer in effect

# Trump's Executive Order

- On Inauguration Day, January 20, 2025, the Trump White House released an executive order titled “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”

# Executive Order Cont.

- Policy of the United States to only recognize two sexes – male and female
- Sex does not include gender identity
- Administration will enforce and interpret all laws related to sex to ensure only two sexes
- All federal agencies must utilize the definitions and terms in the EO

# Executive Order Cont.

- Requires federal agencies to use the word “sex”, not gender, in policies
- Directs Attorney General to issue guidance for EEOC to ensure people can express the binary nature of sex and have the right to single-sex spaces in federally funded entities

# Executive Order Definitions

- Sex = immutable biological classification as either male or female; does not include gender identity
- Gender identity “reflects a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum

# EO Impact on Schools

- Directs the Attorney General to issue guidance on Title IX consistent with the policies and definitions in the EO
- Rescinds guidance documents and Attorney General Guidance that are inconsistent with the EO
- Ensures that “intimate spaces” designated for male or female are designated by sex, not identity

# Rescinded Documents

- Department of Education Guidance Documents including, in part:
  - 2024 Title IX Regulations: Pointers for Implementation (July 2024)
  - Letter to Educators Title IX's 49<sup>th</sup> Anniversary (June 23, 2021)
  - Enforcement of Title IX in light of *Bostock v. Clayton County* (June 22, 2021)
  - AG Memorandum re: Application of *Bostock* to Title IX
  - EEOC Enforcement Guidance on Harassment in Workplace (April 29, 2024)

# Congressional Acts

- **Protection of Women in Sports Act**
- Passed the House of Representatives vote on January 14, 2025
- Received by the Senate – may or may not pass
- Prohibits school athletic programs from allowing individuals whose assigned sex at birth was male to participate in programs for women or girls.

# Dear Colleague Letter by DOE OCR

- January 31, 2025
- OCR will enforce Title IX under the 2020 Title IX Rule
- Trump's EO governs "because he alone controls and supervises subordinate officers who exercise discretionary executive power on his behalf"

# Dear Colleague Letter by OCR, continued

- “Accordingly, open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reoriented to comport fully with the requirements of the 2020 Title IX Rule.”

# So What Does That All Mean?

# Back to 2020 Regs...

- We still have Title IX – federal statute
- KY court's vacatur ruling
- The Dear Colleague Letter states OCR's intent to enforce the 2020 Regulations

# What To Do Now

1. Review and revise TIX policies
2. Review and revise TIX forms and templates
3. Train all personnel AGAIN. (Folks are confused and whiplashed—and understandably so!)
4. Reach out to legal when you have cases that you may have started investigating under the 2024 regs or which were decided under the 2024 regs or you have any lingering questions.

# What to Do If...

- A new complaint is received after 1/31/2025
- A complaint was initiated before 1/31/2025 and the investigation is ongoing
- An investigation was completed before 1/31/2025, but a decision has not yet been made
- Discipline was issued based on a Title IX violation under the 2024 standards, that would not qualify now.

# OCR Complaints

Under the Dear Colleague guidance, OCR will not pick up any **Title IX** complaint if the conduct was discrimination based on sexual orientation, gender identity, or any of the other expanded scope provisions

What about a monitoring agreement under 2024 regulations???

# Athletics

- Still need to provide equal access in athletic opportunities based on sex
- OCR will likely not allow a school to permit a student who was not assigned to female sex at birth to compete on a girl's/women's sports team
  - Challenge by trans girl
  - Challenge by female (sex assigned at birth)
- Changed sex on birth certificate issue?

# Restrooms, Showers, etc.

- Likely “Intimate Spaces” per EO
- This is now not a Title IX issue BUT you can still lean on our prior guidance to try to resolve on an individual basis between the parties involved—common sense and respectful
- What about the extremism...

# What about 9<sup>th</sup> Circuit cases on Sexual Orientation and Transgender as TIX?

- EO and Dear Colleague to contra
- Likely legal challenges to EO? We will watch
- Transgender students' rights and school's responsibilities—bullying and harassment policies still apply

# **Remind Me: 2020 Title IX Provisions**

# Sex Discrimination and Sexual Harassment

- Sex Discrimination—overall broad
  - Disparate funding or opportunities (sports, clubs, scholarships, etc.)
- Sexual Harassment—specific subset of sex discrimination

# Liability

A school will violate Title IX where it has *actual knowledge* of an allegation of sexual harassment experienced by *an individual in the educational program* and the school acts with *deliberate indifference* to that notice.

# Actual Knowledge

Whenever any employee has notice that sexual harassment might have occurred, the school's response obligation is triggered.

- Notice of conduct that would meet the definition if true

# Liability for Deliberate Indifference

A response to notice of sexual harassment that is clearly unreasonable in light of the known circumstances will subject the District to liability under Title IX (i.e. the District can be found to be acting “deliberately indifferent”)

# Education Program or Activity

- Any location, event, or circumstance over which the School exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.
- Does not include conduct that occurred outside of the U.S.

# **Title IX Sexual Harassment or Sexual Violence**

- 3 Types
- All three require:

**Unwelcome sexual conduct  
(no consent)**

**+**

**Conduct effectively denies (or limits) a  
person's equal access to educational  
activity**

# Examples of Denial or Limitation to Educational Activity

- Skipping classes or refusal to go to school
- GPA goes down
- Difficulty concentrating in class
- Bedwetting, crying at night
- Quitting sports or extracurricular activities to avoid contact with alleged perpetrator

# Type 1: Quid Pro Quo

A school employee conditions the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

(effectively the same under 2020 and 2024 regs)

# Type 2: Severe, Pervasive and Objectively Offensive

Unwelcome conduct, determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity

(NOT Hostile Environment)

# Type 3: Sexual Assault or Violence

- Sexual assault

[20 U.S.C. 1092(f)(6)(A)(v)]

- Domestic violence

[34 U.S.C. 12291(a)(8)]

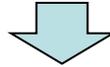
- Stalking

[34 U.S.C. 12291(a)(30)]

(effectively the same under 2020 and 2024 regs)

# Process

District employee learns of allegations which--if true--are covered by Title IX



Coordinator receives complaint (allegations); meets with victim to discuss Title IX and supportive measures,



Coordinator provides notice of allegations to Respondent



Investigator investigates, shares evidence, and drafts report



Decision Maker writes decision



Appeal (if made by party)

# Key TIX Personnel

- Title IX Coordinator
  - Title IX Investigator
  - Title IX Decision Maker
  - Title IX Informal Resolution Facilitator
  - Title IX Decision Maker on Appeal
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- Neither Title IX Coordinator nor Investigator can be Decision Maker per 2020 regulations

# Impartiality and Bias

Title IX requires that Key Personnel act Impartially and avoid Explicit Bias, Conflicts of Interest, Perception of Bias, and Implicit Bias.

# Supportive Measures

- Designed to restore or preserve equal access to education program or activity
- Non-disciplinary or punitive
- Offered without charge
- Cannot unreasonably burden either complainant or respondent

# Examples of Supportive Measures

- Counseling
- Increase monitoring or supervision of students
- Modify courses
- Change schedule
- Repeat course
- No contact order (mutual or individual)

# Complainant

- 2020 regs: individual who is alleged to be the victim of “current” conduct

**Is there a statute of limitations?**

# TRAINING

## 2020 Regs

A District must ensure that Title IX Coordinators, investigators, decision-makers and any person who facilitates an informal resolution process, receive training in:

- Definition of sexual harassment, grievance process, how to serve impartially, conflicts of interest, etc.

# Informal Resolution Process

- When: Requires a complaint be filed
- What: Settlement or restorative process
- How: Mediation is common process

QUESTIONS????

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